
(2011) 11 JH CK 0006
In the Jharkhand High Court
Case No : Writ Petition (C) No. 2213 of 2009

M/s. Bharat Caterers

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

Date of Decision : 24-11-2011

Acts Referred:

Citation : (2012) 4 JCR 326

Hon'ble Judges : Narendra Nath Tiwari, J

Bench : Single Bench

Advocate : V.P. Singh and A.K. Das, for the Appellant; D.K. Dubey, G.P.I. for the State, Mr. Rajan Raj, Advocate for Respondent Nos. 2 to 4 and Mr. A.K. Sinha, Advocate for Intervener, for the Respondent

Judgement

Narendra Nath Tiwari

1. The petitioner, in this writ petition, has prayed for quashing the order passed by the Principal Secretary to the Government, Labour, Employment and Training Department, Government of Jharkhand, communicated by Memo No. 364 dated 31st March, 2009, whereby final order has been passed on the application of the petitioner, refusing to grant exemption from operation of Employees State Insurance Act, 1948. The said order has been assailed on number of grounds. However, when this writ petition is taken up for hearing, Mr. V.P. Singh, learned senior counsel, appearing on behalf of the petitioner, submitted that the impugned order has been passed without giving the petitioner opportunity of being heard and the same is null and void. Learned counsel submitted that from the impugned order it would be evident that the matter was heard by the Special Secretary to the Government, Labour, Employment & Training Department, but the final order has been passed by the Principal Secretary to the Government, Labour, Employment & Training Department. The officer who heard the parties did not pass the order, rather the order has been passed by some other officer who did not hear the parties. There is, thus, blatant violation of the principle of natural justice and the order being a nullity is liable to be quashed.

2. Learned counsel appearing on behalf of the concerned workman next contended that the facilities, which are extended to the workman by the Manager, are better than the facilities provided under the Employees State Insurance Act and that the refusal of exemption of the Management is arbitrary and unjustified.

3. Replying to the said submissions of the petitioner, learned counsel appearing on behalf of Respondent Nos. 2 to 4 contended that only for the reason that the officer who has passed the order did not hear the parties does not render the order a nullity. There are circumstances under which the orders may be passed by the authority, who did not hear the parties. If no prejudice is caused to any party, the said order cannot be said to be illegal.

4. Learned counsel referred to and relied upon the decisions of the Supreme Court in Aligarh Muslim University and Others Vs. Mansoor Ali Khan, and also the decision in Ossein and Gelatine Manufacturers Association of India Vs. Modi Alkalies and Chemicals Limited and Another, .

5. Mr. D.K. Dubey, learned G.P.I., appearing on behalf of Respondent No. 1, argued that in view of the said decisions of the Supreme Court, the order cannot be held to be bad only because the same has been passed by the officer, who has not heard the petitioner.

6. I have heard learned counsel for the parties and perused the facts and materials on record, From the record, it appears that earlier the petitioner had moved this Court in W.P.(C) No. 351 of 2007 for almost same prayer and by order dated 2nd March, 2007 this Court had disposed of the writ petition, directing the Secretary, Labour, Employment & Training Department, Government of Jharkhand, to consider the petitioner's application for exemption and pass speaking order in accordance with law within a period of six weeks from the date of receipt/production of a copy of the order.

7. Pursuant to the said order, the Special Secretary,. Labour, Employment & Training Department, heard the petitioner, but he did not pass the order. The order has been passed by the Principal Secretary, Labour, Employment & Training Department, who had not heard the parties.

8. According to the petitioner, it has caused them serious prejudice, as not only that the Principal Secretary passed the order without hearing the petitioner he had also accepted and considered the documents filed by the Respondent Nos. 2 to 4 behind the back of the petitioner and without giving them opportunity for rebuttal of the same.

9. Learned counsel for the Respondent Nos. 2 to 4, however, has disputed the said facts.

10. But the fact remains that one officer who heard the petitioner did not pass the order. The Officer who passed the impugned order did not hear the petitioner. That itself Is contrary to the basic principle of natural justice particularly when

the petitioner has claimed to have suffered serious prejudice, The impugned order on that account alone is a nullity and cannot sustain.

11. In view of the above, without going into the other rival contentions and grounds of the parties, the impugned order dated 30th March, 2009 (Annexure-15) is set aside.

12. The matter is remitted to the Principal Secretary, Labour, Employment & Training Department, Government of Jharkhand, for hearing the parties afresh and disposing of the petitioner's application, by a reasoned order, In accordance with law, preferably within three months from the date of receipt/production of a copy of this order. This writ petition is disposed of in the above terms.